U.S. House of Representatives
Committee on Transportation and Infrastructure
Washington, DC 20515

James L. Oberstar
Chairman

David Heymsfeld, Chief of Staff
Ward W. McCarragher, Chief Counsel

John L. Mica
Ranking Republican Member

James W. Coon II, Republican Chief of Staff

December 7, 2009

SUMMARY OF SUBJECT MATTER

TO: Members of the Subcommittee on Highways and Transit

FROM: Subcommittee on Highways and Transit Staff

SUBJECT: Hearing on "Public Transit Safety: Examining the Federal Role"

PURPOSE OF HEARING

The Subcommittee on Highways and Transit is scheduled to meet on Tuesday, December 8, 2009, at 10:00 a.m., in room 2167 of the Rayburn House Office Building to receive testimony on the Department of Transportation's role in ensuring the safety of public transit systems. This hearing is part of the Subcommittee's effort to reauthorize Federal surface transportation programs under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), which expired on September 30, 2009. The Subcommittee will hear from the Secretary of Transportation, the Administrator of the Federal Transit Administration (FTA), a Managing Director of the Government Accountability Office (GAO), the Director of Rail Transit Safety of the (NTSB), the Director of a State Safety Oversight agency, and the President of the American Public Transportation Association (APTA).

BACKGROUND

In 2008, Americans took 10.7 billion unlinked transit passenger trips on public transportation systems, representing the highest transit ridership levels in 52 years. Despite the effects of the current economic downturn and lower State and local revenue sources that fund transit operations, public transportation use in the first six months of 2009 has remained strong, with nearly 5.2 billion transit trips taken during this time. Ridership specifically on rail transit, such as subways and light rail, is growing faster than bus ridership, with more than seven million people boarding rail transit vehicles in the United States each day. These figures point to sustained transit ridership growth across the country. Public transportation use is up 38 percent on all modes since 1995, a figure that is almost triple the growth rate of the population (14 percent) and substantially more than the growth rate for vehicle miles traveled on our nation's highways for that same period.

Amid the increase in transit ridership, rail transit continues to be one of the safest modes of transportation. Transit agencies have fewer fatalities and injuries than any other mode of travel. In fact, the passenger fatality rate for rail transit systems has actually decreased during the six year period of 2002 to 2008, from 0.005 fatalities per 100 million miles to 0.002 fatalities per 100 million miles. During that same period, however, injuries resulting from light rail accidents have slightly increased, although ridership figures also show an increase in the number of light-rail transit systems built in recent years. And when the injury rate of rail transit is compared to the 4.4 injuries per 100 million miles on commuter rail systems under FRA jurisdiction, the 8.7 injuries per 100 million miles for Amtrak passengers, and the 61.3 injuries per 100 million passenger miles traveled in motor vehicles on roadways, transit's injury rate of 0.6 injuries per 100 million miles is the lowest of all passenger modes.

Nevertheless, a number of high profile transit accidents in recent years (Chicago, Boston, San Francisco, Washington, DC, etc.) (*See Attachment I*) have highlighted several weaknesses in the current state of rail transit safety. One such weakness is that the state of good repair of many transit systems has been decreasing to the point where older, less safe rail cars, tracks, electrical equipment and other assets are left in service long after their useful life. According to the FTA, more than one-third of the total assets of the largest rail systems are in either marginal or poor condition. Data contained in the Department of Transportation's 2006 Conditions and Performance Report indicate that 16 percent of elevated transit structures, 13 percent of underground transit tunnels, and eight percent of transit track is in substandard condition. This results in an estimated $80 billion maintenance backlog for the nation's rail transit systems.

A second weakness in the safety of the nation's transit systems is that there are no nationwide mandatory minimum standards for rail transit safety, only voluntary standard produced by industry groups. Although transit systems carry more passengers daily than either U.S. domestic airlines regulated by the Federal Aviation Administration (FAA) or passenger railroads regulated by the Federal Railroad Administration (FRA), public transit systems are not directly regulated by the FTA. While commuter rail transit systems that utilize the general freight railway system are regulated by the FRA, heavy and light rail transit systems such as subways and streetcars, in addition to all transit bus systems operate without Federal safety regulation, oversight, or enforcement. In fact, FTA is statutorily barred from regulating the operations of any public transportation system, except for purposes of national defense or in the event of a national or regional emergency. In lieu of direct Federal oversight of rail transit or the authority to issue unified Federal safety standards, FTA oversees 26 separate and distinct State transit safety programs operating in 27 different States with inconsistent safety practices and effectiveness. This current state-based system is known as the "State Safety Oversight" (SSO) program.

FTA's Current State Safety Oversight Program

Since the inception of Federal transit programs, Congress reserved the duties of transit safety regulation to the States. Congress created the first permanent Federal transit capital assistance program in the Urban Mass Transportation Act of 1964 (P.L. 88-365). The Act included a statutory prohibition against federal regulation of transit operations. The SSO program, which is FTA's current framework for its partnership with State transit regulatory bodies, was created in 1991 in the Intermodal Surface Transportation Efficiency Act (P.L. 102-240). The SSO program was created in part as a response to a 1991 NTSB Special Investigation Report on rail transit safety, but NTSB first

recommended Federal oversight of rail transit as long ago as 1978. The final regulations implementing the SSO program were promulgated in 1995, and all States with qualifying rail transit systems were required to be in compliance by January 1997. As such, the Committee now has more than a decade of experience in overseeing and examining the successes and the failures of the current transit safety regime.

The SSO program, codified at 49 U.S.C. § 5330, applies to rail transit systems that are included within FTA's definition of "fixed guideway" rail transit and are not otherwise regulated by the FRA. The program provides that the Secretary of Transportation may withhold five percent of the State's transit formula grants if the State does not meet the SSO program requirements. These requirements are to establish and carry out a safety program plan for each rail transit system in the State. The State must designate an agency that has responsibility to:

- review, approve, and monitor how the transit system's safety program plan is carried out;
- investigate hazardous conditions and accidents on the transit system;
- require actions that correct or eliminate hazardous conditions; and
- require the rail transit agency to develop and maintain a separate system safety program plan and system security plan.

SAFETEA: LU made only minor statutory changes to the SSO program. The most important legislative change requires earlier compliance with the SSO program – heretofore, a new rail transit system could not begin revenue operation until it met the section 5330 requirements, but SAFETEA-LU requires compliance in the project design stage, so that safety oversight is "built in" to the project.

There are currently 50 rail transit systems under the SSO program in 27 different States, including the District of Columbia and Puerto Rico. In the next few years, as many as 15 additional rail transit segments may be constructed as new rail systems or as expansions of current systems, and will also come under the SSO program. Using information provided to the Committee from FTA, attached to this memorandum is a chart showing the current legal authorities of the various SSO agencies (*See Attachment II).*

At the request of the Committee on Transportation and Infrastructure, the GAO reviewed the SSO program in 2006. According to GAO, staffing levels and expertise vary widely across oversight agencies, with some States employing as few as 0.1 or 0.2 full-time equivalent positions for dedicated safety oversight. Although a number of the transit agencies and SSO agencies interviewed for the report stated that the program is worthwhile and has improved overall transit safety, GAO recommended that FTA increase safety training for SSO staff and cover the costs of a more robust training program. GAO also recommended that FTA set better SSO program goals and develop performance measures for the program. To date, FTA has generally complied with these recommendations.

Department of Transportation's Transit Safety Proposal

In response to the series of rail transit accidents and growing industry and Congressional concerns about transit safety, the Secretary of Transportation established an internal Rail Transit Safety Work Group this past summer to evaluate the Federal role in transit safety. One of the

primary recommendations of the internal working group was to establish a larger, formal group of transit industry experts in order to more fully evaluation the issue. As such, the Secretary formally established a Transit Rail Advisory Committee for Safety (TRACS) through public notice in the Federal Register published November 30, 2009 in order to provide advice and recommendations to the FTA regarding transit safety issues. TRACS was established utilizing existing authority in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2). The Executive Director and 25 voting members of TRACS will be chosen after the notice becomes final, 15 days after publication.

Additionally, the Departmental working group has begun to craft a new public transportation safety proposal, the full details of which the Secretary will unveil at this Subcommittee hearing. In short, this new proposal would require the Secretary of Transportation, acting through the FTA, to establish and enforce minimum Federal safety standards for rail transit systems not already regulated by the FRA. FTA proposes to eliminate the statutory prohibition against regulating transit safety. The proposal also provides the Secretary the option to establish a safety program for public transportation bus systems in the future.

The proposal calls for the creation of "opt-in" and "opt-out" processes for rail transit safety regulation by both the States and the FTA. It would require that the Secretary establish a safety certification program whereby a State that chooses to opt-in be required to demonstrate to the Secretary's satisfaction that the State agency has:

- an adequate number of fully-trained staff to enforce Federal regulations;
- been granted sufficient authority by their Governor and State Legislature to compel compliance by the transit systems they oversee; and
- sufficient financial independence from any transit systems under their purview.

Federal financial assistance to participating States would cover training, certification and travel costs of the State agency in overseeing and enforcing Federal transit safety standards. The Secretary would establish a schedule of reimbursable costs to assist a State in defraying the costs of its safety program.

In all States where either the State agency has "opted out" of its responsibility for State safety oversight, or where the Secretary has found a State agency to be inadequate and therefore ineligible to "opt-in", the Secretary, acting through the FTA, will enforce all Federal safety regulations. FTA and State agencies participating in Federal enforcement will be authorized to:

- conduct inspections, investigations, audits, examinations, and testing of a public transportation system's equipment, facilities, rolling stock, operations, and persons engaged in the business of a public transportation system;
- issue reports, subpoenas, and discovery requests; and
- conduct research, development, testing and training.

It is important to note that, unlike in FRA safety regulation, the proposed FTA safety regulation **would not preempt States from establishing more stringent safety standards than the Federal standards**. Federal regulations implementing the new program would be nationally uniform and consider, to the extent practicable, existing industry standards. Currently, APTA has

developed 109 voluntary rail transit safety standards that could be taken into consideration. FTA would also phase in the requirements of the safety program over a number of years, first increasing its financial support for safety training programs, then working with all States and transit agencies to strengthen their safety management systems and asset management systems, and finally implementing a rulemaking on new Federal safety standards.

PREVIOUS COMMITTEE ACTION

On July 14, 2006, the Subcommittee on Highways and Transit held a hearing to examine the effectiveness and management of the FTA's SSO program, which governs the safety of rail transit systems other than commuter rail.

WITNESSES

The Honorable Ray LaHood
Secretary
United States Department of Transportation

The Honorable Peter Rogoff
Administrator
Federal Transit Administration

Ms. Katherine A. Siggerud
Managing Director, Physical Infrastructure
U.S. Government Accountability Office

Mr. Robert J. Chipkevich
Director of Railroad, Pipeline, and Hazardous Materials
National Transportation Safety Board

Mr. Richard W. Clark
Director, Consumer Protection and Safety Division
California Public Utilities Commission

Mr. William W. Millar
President
American Public Transportation Association

Appendix

San Francisco, CA – July 18, 2009, a San Francisco Municipal Transportation Agency (Muni) light rail vehicle struck the rear of another light rail vehicle at the West Portal Station. The National Transportation Safety Board (NTSB) has begun an investigation into this rail transit accident that injured more than 40 people.

Washington, DC – June 22, 2009, a collision occurred between two Washington Metropolitan Area Transit Authority (WMATA) trains on the Red Line near the Fort Totten station in Washington, DC. There were nine fatalities and over 70 people were injured. During the ongoing investigation, the NTSB investigators collected recorder data from eight of the nine recorders on the struck train. The final report is still pending, but NTSB has preliminarily noted that a failure occurred in the transit system's signal system which caused an incorrect signal to be generated by a track circuit module transmitter on the tracks.

Boston, MA – May 28, 2008, a westbound Massachusetts Bay Transportation Authority (MBTA) Green Line train traveling about 38 mph struck the rear of another westbound Green Line train which had stopped for a red signal. The accident occurred in Newton, Massachusetts, a suburb of Boston. Each train consisted of two light rail cars and carried two crewmembers. The operator of the striking train was killed; the other three crewmembers sustained minor injuries. An estimated 185 to 200 passengers were on the two trains at the time of the collision. Of these, four sustained minor injuries, and one was seriously injured. Total damage was estimated to be about $8.6 million. NTSB has determined that the probable cause of the accident was the failure of the operator of the striking train to comply with the controlling signal indication, likely as a result of becoming disengaged from her environment consistent with experiencing an episode of micro-sleep. Contributing to the accident was the lack of a positive train control system that would have intervened to stop the train and prevent the collision.

Chicago, IL – July 11, 2006, a derailment of a Chicago Transit Authority (CTA) train occurred between the downtown Clark/Lake and Grand/Milwaukee stations. About 1,000 passengers were on board the eight-car rapid transit train. Following the derailment, the train came to a stop, and electrical arcing between the last car and the 600-volt direct current third rail generated smoke. The single operator in the lead car received a number of calls on the train intercom. The operator exited the control compartment, stepped onto the catwalk, and walked beside the train to investigate. Electrical power was removed from the third rail, and most passengers walked to an emergency exit stairway about 350 feet in front of the train that led to the street level. Some passengers had to be assisted in their evacuation by emergency responders. The Chicago Fire Department reported that 152 persons were treated and transported from the scene. There were no fatalities. Total damage exceeded $1 million. NTSB has determined that the probable cause of the accident was ineffective management and oversight of its track inspection and maintenance program and its system safety program, which resulted in unsafe track conditions.

Rail Transit State Safety Oversight Program - Existing State Powers

State Safety Oversight Authority	Establish Safety Standards	Conduct Safety Inspections	Conduct Unannounced Inspections	Issue Emergency Orders	Issue Citations	Fine Transit Agency	Influence Operations
Arizona Department of Transportation	Yes	No	No	No	No	No	No
Arkansas State Highway and Transportation Department	Yes	Yes	Yes	Yes	No	No	Yes
California Public Utilities Commission	Yes	Yes	Yes	Yes	No	Yes	Yes
Colorado Public Utilities Commission	No	No	No	Yes	No	No	Yes
Florida Department of Transportation	Yes	Yes	Yes	No	No	No	No
Georgia Department of Transportation	Yes	Yes	Yes	Yes	No	No	No
Louisiana Department of Transportation and Development	No	Yes	No	No	No	No	No
Maryland Department of Transportation	No	Yes	Yes	No	No	No	Limited
Massachusetts Department of Public Works	Yes	Yes	Yes	Yes	No	No	Yes
Michigan Department of Transportation	No	Yes	Yes	Yes	No	No	Yes
Minnesota Department of Public Safety	No	Yes	Yes	No	No	No	No
Missouri Department of Transportation	Yes	Yes	Yes	Yes	Unknown	Yes	Yes
New Jersey Department of Transportation	No	Yes	No	No	No	No	No
New York Public Transportation Safety Board	Yes	Yes	Yes	Yes	No	Limited	Yes
North Carolina Department of Transportation	Yes	Yes	Yes	No	No	No	No
Ohio Department of Transportation	Yes	Limited	Limited	No	No	No	No
Oregon Department of Transportation	Yes	Limited	Limited	No	Limited	Yes	No
Pennsylvania Department of Transportation	No	Yes	Yes	No	No	No	No
Puerto Rico Emergency Management Agency	Yes	Yes	Yes	Yes	No	No	Yes
Regional Transportation Authority (Chicago)	No	Unknown	Unknown	No	No	No	No
Tennessee Department of Transportation	No	Yes	Yes	No	No	No	No
Texas Department of Transportation	No	No	No	No	No	No	No
Tri-State Oversight Committee (DC-MD-VA)	No	No	No	No	No	No	No
Utah Department of Transportation	No	No	No	No	No	No	No
Washington State Department of Transportation	Limited	Limited	Limited	Limited	No	Yes	No
Wisconsin Department of Transportation	No	No	No	No	No	No	No
All States	**46.2%**	**61.5%**	**53.8%**	**34.6%**	**0.0%**	**15.4%**	**30.8%**

*Information provided to the T&I Committee by FTA